UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK,

Plaintiff,

v.

ARROWOOD INDEMNITY COMPANY,

Defendant.

----------x

New York, N.Y.

20 CV 11011 (VEC)

Conference

April 14, 2022
11:00 a.m.

Before:

HON. VALERIE E. CAPRONI,

District Judge

APPEARANCES

REED SMITH, LLP
Attorneys for Plaintiff
BY: TIMOTHY LAW
JOHN BERRINGER

COUGHLIN MIDLIGE & GARLAND
Attorneys for Defendant Arrowood
BY: ADAM SMITH
MELISSA NATALB
-and-
PORZIO, BROMBERG & NEWMAN
BY: ROBERT SCHECHTER

BURNS BOWEN BAIR
Attorney for Intervenor Unsecured Creditors Committee
BY: JESSE BAIR
BRIAN CAWLEY

(Case called)

THE DEPUTY CLERK: Counsel, please state your appearance for the record.

MR. LAW: Timothy Law from Reed Smith for the Roman Catholic Diocese of Rockville Centre. I'm here with my colleague John Berringer.

THE COURT: Good morning. You can take your mask off when you're speaking.

Front table can sit down. Take it off when you're speaking.

MR. SMITH: Good morning. Adam Smith from Coughlin Midlige & Garland on behalf of the defendant Arrowood. I'm joined by Melissa Natalb and Rob Schechter our co-counsel with Porzio, Bromberg & Newman.

THE COURT: Good morning, Ms. Natalb, and Mr. Schechter.

MR. BAIR: Good morning. Jesse Bair from Burns Bowen Bair, special insurance counsel on behalf of the Official Committee of Unsecured Creditors. With me today is my colleague Brian Cawley.

THE COURT: Good morning. Please be seated, everybody.

Let me tell you where I see this morning's conference to be going. I've got six big topics, these are the buckets that I think everything, the buckets that issues fall into.

First is the issue of the current mediation that's going on in the bankruptcy proceeding.

Second is the issue of discovery relative to the actual policies that are at issue.

Third would be discovery on what I'm sort of calling the global defenses, failure to give timely notice, known loss defense and failure to cooperate.

Fourth would be the counterclaims about Father Romano and the other priests that would be the applicability of the expected or intended exclusion.

Fifth is the issue of defense costs, both whether it's pro rata or joint and several, and whether there should be discovery relative to the reasonableness of Jones Day's fees.

And lastly is sort of which underlying claims are at issue, is this just pre-petition claims that were filed in New York State or does it also include claimants who submitted proofs of claim in the bankruptcy proceeding.

Those are my six buckets. Does everybody agree that covers the waterfront?

MR. LAW: Yes, your Honor. I think so.

MR. SMITH: Yes, your Honor.

MR. BAIR: Yes, your Honor.

THE COURT: So let's start with the issue of whether the issues of the duty to defend and related issues can be decided in mediation in the bankruptcy proceeding.

Do you want to be heard on that, Mr. Law or Mr. Berringer?

MR. LAW: Yes, your Honor. Thank you.

The current mediation is scheduled for a three-day in-person session on the 26th, 27th and 28th of this month. In that mediation, we're going to try to get the insurance companies to settle their obligations. If that's successful, they'll surely seek a release of all their liabilities under their insurance policies, and that would include the defense costs issue.

The defense cost issue could also be considered as part of the mediation as a separate issue. But, the more likely way that it's going to get resolved is through a more global resolution if that's reached.

THE COURT: That was not really what I understood your argument to be, but okay, that I understand.

Mr. Smith.

MR. SMITH: Your Honor, the mediation was ordered by Judge Chapman to address plan of reorganization for the Diocese. Our coverage issues, which we've had little to no discovery on, and the involuntary production has not been successful, are not part of the mediation.

THE COURT: Right, but maybe I'm wrong, maybe I misunderstood what Mr. Law just said. Mr. Law has high hopes that this mediation is going to result in Arrowood saying in

exchange for X dollars, release me from everything that goes into the pool. The Lloyd's group does the same thing. So the Catholics then have some sense of the pool of money that's available to settle all these cases.

That's what he's hoping for. If that happens, that resolves all of this, correct?

MR. SMITH: Oh, if we reached a resolution as to our coverage obligations, certainly that would resolve this case.

THE COURT: Okay.

MR. SMITH: That I agree with.

THE COURT: I think that's all he said. That would be wonderful and good luck. God speed. Let's hope that happens.

Mr. Law, what I hear Mr. Smith saying is they don't have enough information for this to be a particularly productive mediation yet.

MR. LAW: Yes, your Honor. I think they've gotten all of the information they could possibly ask for from the Diocese.

THE COURT: Apparently not.

MR. LAW: I mean, I don't know what else they want. We've given them everything in our possession that they've asked for. As far as I can tell.

THE COURT: Is that right?

MR. LAW: We've given them 80,000 documents.

THE COURT: I don't care how many pages. Pages is the

most misleading data point ever in discovery. But be that as it may. All right, Mr. Smith, what is it you want that you don't have?

MR. SMITH: Your Honor, well, I'll start with you don't know what you don't have if you don't have it.

More importantly, we do know we are missing a significant amount of documents. The way that these documents -- in this voluntary production was produced was extremely haphazard. Personnel files for one particular priest found in 20 different locations that you had to piece together. They are not complete. They're missing big sections of them. Secret files were missing big sections of them.

THE COURT: Do you have secret files? Do you have any of the secret files?

MR. SMITH: We may have some of them. Again, it's because we weren't given Bates number 1 through 100 is the file for X priest. We weren't given it that way. So, they don't tell you at what Bates number because we didn't do the formal discovery. We're given a certain amount of pages, which I am glad your Honor said it before I did about the number of pages. And it's left to us to figure out the documents we want, where are they. They're not all there. We know they are not all there. We just received, maybe less than two weeks ago, maybe two weeks ago a privilege log that is going to create all sorts of issues about what's being withheld. There are a number of

holes, and they know they haven't given us everything. There are certain things they've simply said we are not giving.

We had at one point given them a laundry list of things, and some of them they said we'll give them to you, other things they said we are not giving you.

It's been an extremely haphazard and inefficient and frankly has not helped us prepare for the mediation. We're lacking. And now, while they've represented that this was about defense costs, we only want to focus on defense costs, just because we are talking about the mediation, we received a demand from them that and I won't disclose --

THE COURT: I don't want to know anything about it.

MR. SMITH: The only point I want to raise, it doesn't address our indemnity obligation. Again, we'd love to be prepared if we could, but we're not.

THE COURT: Here's the thing. I'm not in charge of the mediation. I would hope that the mediation would be successful and useful. I presume, Mr. Smith, everything you've just told me you've also told the mediator. You are saying yes, and Mr. Law is shaking his head no, no, no.

MR. SMITH: We haven't had an actual mediation session yet. That was just scheduled for April 26, 27 and 28. We have had one conversation with the mediator since he's been appointed, and we have addressed these issues to him to let him know, to set his expectations about what our problems are.

THE COURT: Got it.

So here's my view on the mediation. Again, if you can settle in mediation, a global settlement, I will be thrilled. If you can't, I don't see the mediation, the bankruptcy mediation as being an alternative location to this litigation. It may happen it will resolve it. They haven't agreed to mediate this dispute. So, to me, the mediation is kind of neither here nor there, other than I hope it is successful.

That brings us to the issue of the policies. I read your letter to say you have both given each other everything you actually have on the policy that Arrowood, they were Royal policies that were written from '57 to '76. And there are gaps. Is that a fair statement?

MR. LAW: Yes, your Honor. That's correct. There are some policies that have more documentation to them than others. Some are more complete than others. And the parties have already exchanged what they have. Arrowood really didn't have anything that we didn't already have. So the one thing we mentioned in our letter are the Royal forms that Arrowood may have in its possession.

THE COURT: Mr. Smith, do you object to giving over the old Royal forms?

MR. SMITH: I am not sure which forms they're referring to or whether such forms exist. The first time I got that was in a letter. I'm not opposed to providing them with

discovery.

THE COURT: What do you want from them?

MR. SMITH: They say they've given us everything. I would like the certification as to what the search was conducted that they do have everything. Because again, we've received conflicting information from them on what actually they do and don't have. Most importantly, though, I want interrogatories to say if this is everything and we all recognize this is not enough, even what the limits of the policy are, then tell me what your position -- that's why I want to serve interrogatories -- tell me what you believe to be the terms and conditions of policy X, what the limits are, and tell me what your basis is for that position so I can see. I have no idea if I agree with it, disagree with it. Right now I don't know.

THE COURT: Okay.

MR. SMITH: They've said they've given me all the documents.

THE COURT: Mr. Law, what's your objection to providing that information? It seems to me like interrogatories might be the most efficient way of doing that.

MR. LAW: Your Honor, my only point on that was that asking us what's in a written document doesn't make a lot of sense. If we are going to be getting Royal forms and they are asking us do you consider parts of these Royal forms to be

within the policy, that might be something.

THE COURT: Right now, you have a position on what the policy limits are and what the provisions of the policies are. You are the plaintiff.

MR. LAW: Yes.

THE COURT: So, what I hear the defendant saying is they just want to know what the basis of those claims are. And you are saying you need to see the Royal forms before you can give them the basis for that information?

MR. LAW: Well, your Honor, based on the policy information that we've provided them, I think that information is in there. The Royal forms might inform certain of the terms and conditions of the policies, so we want to see those before we answered interrogatories, if interrogatories were going to be allowed.

I think the better way to do it would be to have policy documents and try to reach some sort of a stipulation as to what the policy documents are as opposed to interrogatories.

THE COURT: That's great. Mr. Law, I'm all in favor of stipulations. But based on my experience in this case, to date, you guys could not stipulate that the sun rises in the east. So, I don't hold out a lot of hope that if I send you off to say do this informally, figure out what the policy limits are and what the provisions are, that you'll do anything other than come back to me in three months in the same position

you are right now.

So, I'm prepared to order discovery on that. The question is, how long do you need? This is discovery solely on the issue of the basis for the Diocese's position on policy limits and terms, and the defendant's production of, they've produced everything they've got actually on these insurance policies, but any Royal forms that might be relevant.

MR. SMITH: If the question was posed to me, we can serve our discovery requests in that regard within two weeks.

THE COURT: All right. Is that a fair time frame as well for you, Mr. Law?

MR. LAW: Yes, your Honor.

THE COURT: So you're both going to serve discovery demands relative to what is in the policies by April 28.

Do you think you will both be able to respond to those within 30 days?

MR. SMITH: From Arrowood's perspective, depending on the scope of what they're asking for, I believe that should be sufficient. If I need an extra 15 days, I'm sure we can agree on those types of issues. But I think 30 days is a fair number to start with.

THE COURT: Mr. Law, do you think that's fair?

MR. LAW: That should be fine for us to produce the policy documentation we have and to ask -- respond to whatever interrogatory requests, as long as they're reasonable in

number. Again, I don't envision a problem there.

THE COURT: Okay. So be it.

So that brings us to the issue of discovery relative to timely notice, known loss defenses, and failure to cooperate.

So to reiterate what I've said in the opinion, I'm sympathetic to the church, to the Diocese on the issue of an insured should not have to litigate a two-front war. They shouldn't have to fight with the plaintiffs at the same time they're fighting with their insurance company.

That said, that doesn't mean there should be no discovery. The insurance carrier has a good faith basis in my view, probably more than that, sort of a reasonable argument that some of these defenses might actually come to pass as to at least some claims. So they're entitled to some discovery. So the issue is how do we get from where you are right now, which is really Arrowood, you are trying to use this as a backdoor to fight them on everything. Or at least you haven't sort of described to me what your targeted discovery is that would keep that from happening.

So I feel like this is a little bit like trying to nail Jello. Y'all don't have an actually sharp dispute yet because discovery hasn't been served. Right?

Correct, you have not served discovery on this topic?

MR. SMITH: That's correct, your Honor.

THE COURT: Let's give you a date to serve discovery. That would be discovery that would relate to those three defenses. The Diocese then can decide whether to respond or to object to all of it. My hope would be that the insurance carrier would propose reasonable discovery, understanding that you cannot use this as a backdoor to full discovery on whether you ultimately have a duty to indemnify. And that the Diocese will be reasonable, because you do have an obligation to provide some discovery. So that we can figure out what's going on here, whether they actually do have a defense to their obligation to defend. So, but it's too mushy to me at this point.

Assuming there is objections, and you do not get everything you need, then you are going to have to make a motion to compel. And the reason I want to set it up that way is in the limited research I've done on this topic, it is not a clearcut issue, and you are going to be kind of in between some cases. So I want you to do good legal work on this, on precisely how New York courts have drawn these lines, and you may have to go outside of New York. I don't know.

So, let's talk about a time frame for that. You could do this all as part of one set of discovery demands. I think there could be some utility to making them separate discovery demands.

MR. SMITH: That's what I was going to suggest. Get

the policy issues, get those done in two weeks.

THE COURT: Do you need that discovery before you propound your discovery on your defenses?

MR. SMITH: No, I don't think we do. We can propound discovery without waiting for their responses there. But I would ask for more than two weeks.

THE COURT: Of course.

MR. SMITH: We'd probably ask for 30 days from today. I think would be more than enough time. I want to make sure we tailor them in accordance with your Honor's instructions today. I think 30 days would be more than sufficient for us to serve that discovery.

THE COURT: Okay. That would take you to let's say May 13. And then I'll give you 30 days to respond. Is that fair?

MR. LAW: Yes, your Honor.

THE COURT: So the plaintiff's response to those will be due on June 17. That may be a little more than that.

MR. LAW: Your Honor, to the extent we decided to do discovery on these issues as well, it is a two-way street, right?

THE COURT: Of course. I don't know what they have that's going to help you. But if you want to propound discovery on these topics, go for it.

MR. LAW: Yes, your Honor. The main thing would be

trying to figure out what claims, identifying the claims they actually have some good faith basis for raising, say a late notice defense or something like that.

THE COURT: Okay. So that brings us to -- so, what I'm going to do then is set up a conference. So your responses will be due on the 17th of June. I'm not sure we need a conference. I think, what, how long do you think you'll need to assess whether you want to make a motion to compel? It kind of depends what you get.

MR. SMITH: I am thinking about the time frame, end of June. We are going to need a few weeks probably, it will depend on the volume of stuff, maybe it would be best for us to send you a letter within two or three week of receipt and tell you where we are. Does that make sense?

THE COURT: That makes sense. Here's what you need to do. By let's say July 8, before July 8, the parties need to meet and confer, and if there is going to be a motion to compel, you need to meet and confer and propose a briefing schedule. Again, don't treat this like a standard five-page discovery dispute. I want a full sort of brief on a motion to compel and a full response on a motion to compel. I'm telling you now, I see some difficult legal issues, so I want good briefing on this. So, propose a briefing schedule on July 8.

MR. SMITH: Sure.

THE COURT: On those issues.

That brings us to the issue of the counterclaim regarding Father Romano and other priests that is the applicability of the expected or intended exclusion. I think what they want first, they need Arrowood to identify the underlying complaints that are covered by counterclaim number two.

MR. SMITH: Your Honor, I would think that these issues can all get melded right into the same discovery schedule we just addressed. If there are certain questions they want answered as it relates to our counterclaim basis number two, just like we are trying to pursue the other defenses, they can serve the discovery on that same time frame, we'll respond to it.

THE COURT: Does that work from your perspective, Mr. Law? Is there any reason you need that in advance?

MR. LAW: I think that makes sense to meld that together.

THE COURT: So that will be all part and parcel then of the discovery demands that are made on May 13. That gives you an actual basis for reciprocal discovery or for other demands at that point.

Then we get to the issue of the defense costs. This is what's been incurred so far and the reasonableness of Jones Day's fees.

So, Mr. Law, you seem to be arguing these costs are

just not all that high and why is Arrowood being so difficult about this. Is that a fair assessment of the net of your argument?

MR. LAW: That's part of it, your Honor.

THE COURT: That of course cuts both ways.

MR. LAW: Yes. So, that is only one part of it. So, my thoughts on this are that there are a couple of millions of dollars in legal fees probably in dispute for the --

THE COURT: Couple of millions?

MR. LAW: Couple of million, yeah, overall. The defense of each individual action is individually small. For each individual actions, it is 100 or less. Some are under $10,000 for the pre-petition defense clients.

THE COURT: It reminds me of that old a dollar here, a dollar here, and all of a sudden you are talking billions.

MR. LAW: Exactly. On the claims where -- let's step back.

So they haven't disclaimed coverage for any of these cases. They are saying that they are defending under a reservation of rights. They've disclaimed for four cases. Your Honor declared they had a duty to defend those four cases. They should pay the amount of defense costs that they find to be reasonable. And then we fight over the portion that is unreasonable through discovery and in a normal practice, if we are not able to settle.

THE COURT: But also in that bucket of costs, am I not correct is also the defense costs for fees where they've already paid some of it. But they are just disputing, there is a delta that they dispute is not reasonable.

MR. LAW: Yes. So the delta that they dispute is a couple of million dollars over all.

THE COURT: Then there is the four claims. How much, what's the total defense costs?

MR. LAW: Something like 126,000. We've put it in the letter. So, of that 126, they might pay 30 or 40, then we would fight over the remainder.

THE COURT: Okay. So, let me say that I'm sort of two minds on this. On the one hand, the larger resolution of some of Arrowood's arguments may mean that they don't owe any of this and that you in fact owe them. So there is a side of me that wants to say, look, just hold off on this until the larger issues get decided and get resolved as part of this.

The other side of me says this is not a lot of money, and taking extensive discovery on the reasonableness of Jones Day's fees makes, in my humble opinion, no sense.

I'm happy to send you to a settlement conference for it with a magistrate judge. The magistrate judges in this district are well aware of what reasonable dollar rates for lawyers in this area defending essentially tort claims. Tort claims with twists, but they're still tort claims. So that

would be one way of resolving this issue. Let's clean out the underbrush of some of this money, recognizing that if Arrowood wins on the larger issues you will have to pay it back. So I am of two minds.

MR. SMITH: Your Honor, if I could be heard.

THE COURT: Yes.

MR. SMITH: The less than $100,000 that's at issue with these four claims is really the tail wagging the dog on this thing, as Mr. Law acknowledged. Their claims for defense costs are in the millions. We don't know what the number is. What are you actually claiming you are entitled to in defense costs. They filed a motion for summary judgment on that very issue. And we even, in that motion practice, we never got the final number what is it you guys are saying you are owed.

To your point, we had defenses that while your Honor's ruled on those four claims, as it relates to our expected intended defenses, there are other defenses there. For us to engage in extra and duplicative and this piecemeal litigation for these four claims to resolve a dispute over something less than $100,000 that we may actually get back if we're successful in our other defenses, doesn't make a lot of sense to us. It seems piecemeal, it seems inefficient, and at the end of the day it is really not moving the needle one way or the other on this litigation. Which is why we said include the defense costs within the whole panoply of discovery, we're very

interested in what is their total claim.

It doesn't make sense to piece these four out of the bigger picture.

MR. LAW: On the bigger issue, your Honor, a settlement conference with a magistrate judge I think is a reasonable way to try to resolve it.

THE COURT: No, not on the bigger issue. He is not proposing.

MR. LAW: On the 2 million in defense costs.

THE COURT: He was not proposing that. He was saying this is, in the scheme of things, put this to one side, let's resolve the bigger issues, and this will then sort of fall away. It is either going to fall away because they have a defense or it's going to fall away because they don't have a defense in which case they'll need to pay. But at that point, you are actually arguing over something that they really care about, because it is really money to them. Right now they're still holding out hope they're not going to be responsible for any of this.

MR. LAW: Yes, your Honor. I understand that. So, my view of it is that if they are going to maintain their disclaimer for those four cases, despite your Honor's ruling it will be based on these other defenses, they have not maintained a disclaimer for any of the other cases which they've agreed to defend under a reservation of rights. And the amount of those

defense costs, I agree, having a lot of discovery about that probably is an inefficient use of resources. And if we can reach agreement on a reasonable Jones Day rate on the reasonable expense costs that were incurred pre-petition is a reasonable thing and can bring money into the estate.

THE COURT: It won't bring enough money into the estate to make a difference. You are looking for hundreds of millions of dollars, not $100,000 for a claim. Again, I realize, a dollar here, a dollar there, you are talking about real money. But, I am just inclined to say this is just such a -- this is really the tail wagging the dog. And so, I'm inclined to put that to one side for the moment. You don't particularly want to make discovery of all of your defense costs and what you paid to Jones Day, right?

MR. LAW: Your Honor --

THE COURT: That's not one of the things you are particularly looking to do.

MR. LAW: The bigger issue would be the expert discovery, I think which would be an expense. We are not anxious to do all of that discovery.

THE COURT: I think expert --

MR. LAW: We're anxious to reach a resolution of it.

THE COURT: I think expert discovery on the reasonableness of Jones Day's fees would be a waste of money.

MR. LAW: I agree.

THE COURT: The judges in this district are well aware of what are reasonable fees. Whether Jones Day's fees are reasonable or not remains to be seen. As I recall, the rates were eye popping.

MR. SMITH: Yes, they were, your Honor. The only question I'd have, in light of your comments as it relates to the global defense costs, like I said, we were hit with a motion seeking a judgment on it. Are we taking discovery at least on the global number and what the basis is for it and the documents related to that or are you telling us to put it in abeyance and not to look at it?

THE COURT: I am telling you to put it in abeyance.

MR. SMITH: I want to make sure we are not hit with a motion. We want to understand it's both sides.

THE COURT: I want to put that entirely on hold and resolve the bigger issues, the bigger points of dispute between the parties, because this issue, I think if everything else is resolved, can be settled, because it's just not that much money. In the scheme of things, it is not that much money. And I think you will be able to settle it if everything else is resolved. Or if not, it can be decided and it's not going to be a huge lift to decide that issue.

That brings us to the issue of which underlying claims are actually at issue in this -- I removed the proceeding that you brought, so what is at issue? Do you want in this lawsuit

the issue of Arrowood's obligation to defend claims that have been filed in the bankruptcy?

MR. LAW: Yes, your Honor. I think it would be wise for us to amend our complaint now that we've got an action that's solely against Arrowood in this case. And now that your Honor has said some of the way in which we structured our requests for relief really were calling for advisory opinions, I think it would be wise for us to amend the complaint. Put at issue squarely the issue of post-petition defense costs of the claims in bankruptcy, in addition to the pre-petition defense costs, which is what we initially brought our action about.

THE COURT: Is there any objection to them amending the complaint to make it clear what they are actually claiming?

MR. SMITH: Your Honor, Mr. Law raised this with me I think it was yesterday or the day before about amending his complaint, and I said provide me a proposed pleading, and I would be happy to look at it. I'm not going to waste time on a motion for leave that's unnecessary, but I wanted to see exactly what it was they were going to allege.

THE COURT: Okay. So, how long will it take you to provide your opponent with a proposed amended complaint?

MR. LAW: May I have two weeks, your Honor?

THE COURT: Yes. So the amended complaint is due to your opponent on the 27th. And then if there is a dispute, you need to let me know by the following week, which would be

May 4.

MR. SMITH: Your Honor, can we get a couple more days only because the mediation is right in the middle of that and we could be both be distracted, and I will need time to talk to my client.

THE COURT: Okay.

MR. LAW: Mr. Smith makes a wonderful point that we should be talking about three weeks for all of our deadlines when we have been saying two weeks. This lands right in the middle of this mediation session.

MR. SMITH: I want to make sure that wonderful point got on the record.

THE COURT: Call The New York Times. It was on April 14.

So, let's adjust these time frames then. So, you are going to serve discovery demands relating to the policy and the terms of the policy, when -- the mediation is the 27, 28, 29.

MR. SMITH: 26, 27, 28.

THE COURT: Let's go over to the following week. So your discovery requests are due on May 6. Again, the response will be due in 30 days. The discovery demand for the defenses will be due on May 20. Responses will be due June 24. So the motion to compel, you need to meet and confer and give me a schedule on a proposed motion to compel by July 15. So the draft amended complaint needs to be given to Arrowood by May 4.

And Arrowood, you need to let me know whether you object to it by May 10.

Okay? That's everything on my list of issues. I believe. Yes. Anything on your list of issues, Mr. Law?

MR. BERRINGER: Your Honor, just one for purpose of clarity just one point.

THE COURT: Sure.

MR. BERRINGER: There has been a lot of back and forth about Arrowood's ostensible right to recoup defense costs. Under New York law, I just feel constrained to point out our position under New York law, which is that they have no right to reimbursement.

THE COURT: That's even more reason to stay that issue.

MR. BERRINGER: Okay.

THE COURT: If you're right.

MR. BERRINGER: I just felt constrained to get that on the record.

THE COURT: I had forgotten that was a point of controversy. And in truth, I was just assuming that of course there is a right to recoup.

MR. BERRINGER: Not unless they put it in the policies.

THE COURT: That would be the policy no one has. I am going to assure you they'll tell you that was a standard term

in all the policies.

MR. BERRINGER: They would be misrepresenting their policies. Back in those days, no one had that in their policies.

THE COURT: Back in those days people didn't charge $1,000 an hour to defend a tort claim.

MR. BERRINGER: I wish I could get a thousand an hour.

THE COURT: Okay.

Anything on your agenda, Mr. Smith, that I haven't covered?

MR. SMITH: No, thank you, your Honor.

THE COURT: How about the unsecured creditors?

MR. BAIR: No, your Honor.

THE COURT: Good luck in the mediation, everybody. Maybe the mediator can hold the Dioceses and shake out some documents so y'all can get what you need and you can resolve this case and we can all go on with our lives.

Thank you, all. Good luck.

MR. SMITH: Thank you, your Honor.

(Adjourned)